

### **REMARKS**

Claims 38 to 75 are pending in this application. Claims 55 to 71 have been withdrawn from consideration. Claim 54 was rejected under 35 U.S.C. §112, second paragraph as being indefinite. Claims 38 to 40, 42, 43, 45, 47, and 72 to 75 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,422,637 to Mac Farland in view of U.S. Patent No. 2,897,003 to Lelli et al. Claim 44 was rejected under 35 U.S.C. §103(a) as being unpatentable over Mac Farland in view of Lelli et al. as applied to claim 38 above, and further in view of U.S. Patent No. 6,478,362 to Obendiek. Claims 41, 46, and 48 to 53 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form and to include all of the limitations of the base claim and any intervening claims. Claim 54 was indicated as being allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Claims 38, 41, 48, 54, 56 to 58, 66, 69 and 70 have been amended.

Reinstatement of withdrawn claims 56 to 63, 66, 69 to 71 is respectfully requested.

Claims 76 and 77 have been added. Support for claim 76 is found in paragraph [0062], and in Fig. 6, for example. Support for claim 77 is found in paragraphs [0057] and [0062], and in Fig. 3, for example.

Claims 55, 64, 65, 67 and 68 have been cancelled without prejudice.

Reconsideration of the application based on the following is respectfully requested.

#### **Rejections under 35 U.S.C. 112:**

Claim 54 was rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim that subject matter which applicant regards as the invention.

Claim 54 has been amended to recite “the central roof part”, support being found in claims 11 and 16, paragraphs [0060], [0073] and [0075], and Figs. 9, 10 and 12, for example. No new matter has been added.

Withdrawal of the rejection to claim 54 under 35 U.S.C. §112, second paragraph thus is respectfully requested.

Rejections under 35 U.S.C. §103(a)

Claims 38 to 40, 42, 43, 45, 47, and 72 to 75 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,422,637 to Mac Farland in view of U.S. Patent No. 2,897,003 to Lelli et al.

Mac Farland “refers to a retractable vehicle top, in particular for at least four-seat convertibles having an upper, substantially rigid roof section, . . . wherein the upper and the lower roof section are arranged in a manner pivotal into and out of an accommodation chamber in the motor vehicle.” See col. 1, lines 6 to 16 of Mac Farland.

Lelli “relates to a convertible top, and more particularly to a power actuated convertible top” (see, e.g. col. 1, lines 14 to 15 of Lelli) that “reduces the amount of force required at any given point to operate the top and allows the power actuator to operate within its effective range of force output by delaying the unfolding of the top until the top has been moved to a position where less force is required to continue to raise the top” (see, e.g. col. 1, lines 43 to 48 of Lelli).

Claim 38 recites a folding top for a cabriolet vehicle having a bodywork, the folding top comprising:

- a first roof part including a rigid shell part and being pivotable relative to the bodywork;
- a second roof part including a rigid shell part and being pivotable relative to the bodywork;
- a positive control means including a first linkage, a second linkage and a mechanical control device;
- the first linkage connecting the control device and the first roof part;
- the second linkage connecting the control device and the second roof part; and
- a common force-introduction unit configured to driveably move the first and second roof parts using the positive control means, wherein the control device is configured to enable a delay in a movement of the second roof part relative to a movement of the first roof part.

As admitted in the Office Action on pages 5 and 6, it is respectfully submitted that neither Mac Farland nor Lelli teach or disclose “a positive control means including a first linkage, a second linkage and a mechanical control device; the first linkage connecting the control device and the first roof part; the second linkage connecting the control device and the second roof part” as recited in claim 38. Mac Farland does not teach a positive control means because an opening

and closing movement of the folding top is only partially driveable by the force introduction unit 70. The force introduction unit 70 drives the relative movement of the central roof part 23 and the rear roof part 7, but the relative movement of the front roof part 21 with respect to the central roof part 23 is only driven by the tension of the outer skin 65. Therefore, it is not possible to completely drive a closing movement of the folding top by the force introduction unit 70 since it is not possible to transmit a closing movement to the front roof part 21 by the outer skin 65. For completely closing movement, further intervention is necessary to close the front roof part 21.

Withdrawal of the rejections to claim 38 and its dependent claims under 35 U.S.C. §103(a) thus is respectfully requested.

#### Allowable Subject Matter

Claims 41, 46, and 48 to 53 were objected to as being dependent upon a rejected base claim, but were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 41 has been amended to depend from new independent claim 76.

Claim 48 has been rewritten into independent form.

In view of the above and with respect to claim 38, withdrawal of the objections to claims 41, 46, and 48 and its dependent claims is respectfully requested.

Claim 54 was objected to but was indicated as being allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Claim 54 has been amended to provide proper antecedent basis.

In view of the above with respect to the rejection under 35 U.S.C. 112, second paragraph, and with respect to claim 48, withdrawal of the objection to claim 54 is respectfully requested.

#### New Claims

Claims 76 and 77 have been added.

Support for claim 76 is found in paragraph [0062], and in Fig. 6, for example. None of the documents show or suggest to arrange a common force introduction unit between elements of

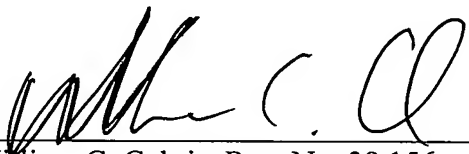
a positive control means. Instead, all cited documents show folding tops comprising force introduction units being arranged on the bodywork of the vehicles.

Support for claim 77 is found in paragraphs [0057] and [0062], and in Fig. 3, for example. None of the cited documents disclose a mechanical control device which is configured to enable a delay in a movement of a second roof part relative to a movement of a first roof part and which is arranged between said roof parts.

**CONCLUSION**

The present application is respectfully submitted as being in condition for allowance and applicants respectfully request such action. If, upon review, the Examiner has any questions with regard to this Response or is for any reason unable to allow the pending claims as presented, the Examiner is respectfully requested to telephone Applicant's undersigned attorney in order to resolve any outstanding issues and advance the prosecution of the case.

Respectfully Submitted,  
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